Supreme Court, U. S.
FILED
NOV 25 1974
MICHAEL RODAK, JR., CLERK

# APPENDIX

IN THE
# Supreme Court of the United States
OCTOBER TERM, 1974

**No. 73-1742**

---

RUSSELL E. TRAIN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
*Petitioners*

—v.—

NATURAL RESOURCES DEFENSE COUNCIL, INC., SAVE AMERICA'S VITAL ENVIRONMENT, JANE WEBER, AND SUSANNE ALLSTROM

---

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

---

PETITION FOR CERTIORARI FILED MAY 20, 1974
CERTIORARI GRANTED OCTOBER 15, 1974

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1974

**No. 73-1742**

---

RUSSELL E. TRAIN, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
*Petitioners*

—v.—

NATURAL RESOURCES DEFENSE COUNCIL, INC., SAVE AMERICA'S VITAL ENVIRONMENT, JANE WEBER, AND SUSANNE ALLSTROM

---

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

---

## INDEX


| | Page |
|---|---|
| Relevent docket entries | 1 |
| 40 C.F.R. 51.1 | 2 |
| 40 C.F.R. 51.5 | 6 |
| 40 C.F.R. 51.6 | 7 |
| 40 C.F.R. 51.15 | 8 |
| 40 C.F.R. 51.32 | 9 |
| 40 C.F.R. 52.572 | 10 |
| 39 Fed. Reg. 34533-34535 | 11 |
| 39 Fed. Reg. 34572-34574 | 22 |
| S. Rept. No. 91-1196 pp. 1, 86-90 | 28 |
| Order granting certiorari | 37 |

## RELEVANT DOCKET ENTRIES

| | |
|---|---|
| June 30, 1972 | Filed petition for review |
| September 12, 1972 | Filed certified list of documents |
| September 13, 1973 | Filed notice of election Rule 30(c) |
| November 15, 1972 | Filed brief of Petitioner (NRDC) |
| December 26, 1972 | Filed brief of Respondents |
| January 26, 1973 | Filed reply brief of Petitioners |
| January 30, 1973 | Filed Supplemental Certified Index of Record in lieu of Record |
| February 20, 1973 | Filed Appendix |
| August 22, 1973 | Filed copy of Georgia implementation plan |
| February 8, 1974 | Filed court's opinion |
| March 25, 1974 | Filed denial of Respondent's Motion for Stay of Mandate |
| June 12, 1974 | Filed notice from United States Supreme Court that Respondent's Motion for Stay of part III of mandate granted |

Title 40—Protection of Environment

Subpart A—General Provisions

§ 51.1 Definitions.

As used in this part, all terms not defined herein shall have the meaning given them in the Act:

(a) "Act" means the Clean Air Act (42 U.S.C. 1857-18571, as amended by Public Law 91-604, 84 Stat. 1676).

(b) "Administrator" means the Administrator of the Environmental Protection Agency (EPA) or his authorized representative.

(c) "Primary standard" means a national primary ambient air quality standard promulgated pursuant to section 109 of the Act.

(d) "Secondary standard" means a national secondary ambient air quality standard promulgated pursuant to section 109 of the Act.

(e) "National standard" means either a primary or a secondary standard.

(f) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility, building, structure, or installation which directly or indirectly results or may result in emissions of any air pollutant for which a national standard is in effect.

(g) "Local agency" means any local government agency, other than State agency, which is charged with the responsibility for carrying out a portion of a plan.

(h) "Regional Office" means one of the ten (10) EPA Regional Offices.

(i) "State agency" means the air pollution control agency primarily responsible for development and implementation of a plan under the Act.

(j) "Local agency" means any air pollution control agency other than a State agency, which is charged with responsibility for carrying out a portion of a plan.

(k) "Point source" means:

(1) Any stationary source causing emissions in excess of 100 tons (90.7 metric tons) per year of any pollutant for which there is a national standard in a



region containing an area whose 1970 "urban place" population, as defined by the Bureau of Census, was equal to or greater than 1 million or

(2) Any stationary source causing emissions in excess of 25 tons (22.7 metric tons) per year of any pollutant for which there is a national standard in a region containing an area whose 1970 "urban place" population, as defined by the U.S. Bureau of the Census, was less than 1 million and

(3) Without regard to amount of emissions, stationary sources such as those listed in Appendix C to this part.

(l) "Area source" means any small residential, governmental, institutional, commercial, or industrial fuel combustion operations; onsite solid waste disposal facility; motor vehicles, aircraft, vessels, or other transportation facilities; or other miscellaneous sources such as those listed in Appendix D to this part, as identified through inventory techniques similar to those described in: "A Rapid Survey Technique for Estimating Community Air Pollution Emissions," Public Health Service Publication No. 999-AP-29, October 1966.

(m) "Region" means (1 an air quality control region designated by the Secretary of Health, Education, and Welfare or the Administrator, (2) any area designated by a State agency as an air quality control region and approved by the Administrator, or (3) any area of a State not designated as an air quality control region under subparagraph (1) or (2) of this paragraph.

(n) "Control strategy" means a combination of measures designated to achieve the aggregate reduction of emissions necessary for attainment and maintenance of a national standard, including, but not limited to, measures such as:

(1) Emission limitations.

(2) Federal or State emission charges or taxes or other economic incentives or disincentives.

(3) Closing or relocation of residential, commercial, or industrial facilities.

(4) Changes in schedules or methods of operation of commercial or industrial facilities or transportation sys-

tems, including, but not limited to, short-term changes made in accordance with standby plans.

(5) Periodic inspection and testing of motor vehicle emission control systems, at such time as the Administrator determines that such programs are feasible and practicable.

(6) Emission control measures applicable to in-use motor vehicles, including, but not limited to, measures such as mandatory maintenance, installation of emission control devices, and conversion to gaseous fuels.

(7) Measures to reduce motor vehicle traffic, including, but not limited to, measures such as commuter taxes, gasoline rationing; parking restrictions, or staggered working hours.

(8) Expansion or promotion of the use of mass transportation facilities through measures such as increases in the frequency, convenience, and passenger-carrying capacity of mass transportation systems or providing for special bus lanes on major streets and highways.

(9) Any land use or transportation control measures not specifically delineated herein.

(10) Any variation of, or alternative to, any measure delineated herein.

(o) "Reasonably available control technology" means devices, systems, process modifications, or other apparatus or techniques, the application of which will permit attainment of the emission limitations set forth in Appendix B to this part, provided that Appendix B to this part is not intended, and shall not be construed, to require or encourage State agencies to adopt such emission limitations without due consideration of (1) the necessity of imposing such emission limitations in order to attain and maintain a national standard, (2) the social and economic impact of such emission limitations, and (3) alternative means of providing for attainment and maintenance of such national standard.

(p) "Compliance schedule" means the date or dates by which a source or category of sources is required to comply with specific emission limitations contained in an implementation plan and with any increments of progress toward such compliance.



(q) "Increments of progress" means steps toward compliance which will be taken by a specific source, including:

(1) Date of submittal of the source's final control plan to the appropriate air pollution control agency;

(2) Date by which contracts for emission control systems or process modifications will be awarded; or date by which orders will be issued for the purchase of component parts to accomplish emission control or process modification;

(3) Date of initiation of on-site construction or installation of emission control equipment or process change;

(4) Date by which on-site construction or installation of emission control equipment or process modification is to be completed; and

(5) Date by which final compliance is to be achieved.

(r) "Transportation control measure" means any measure, such as reducing vehicle use, changing traffic flow patterns, decreasing emissions from individual motor vehicles, or altering existing modal split patterns that is directed toward reducing emissions of air pollutants from transportation sources.

(s) "Vehicle trip" means any movement of a motor vehicle from one location to another that results in the emission of air pollutants by the motor vehicle.

(t) "Trip type" means any class of vehicle trips possessing one or more characteristics (e.g., work, nonwork; peak, off-peak; freeway, nonfreeway) that distinguish vehicle trips in the class from vehicle trips not in the class.

(u) "Vehicle type" means any class of motor vehicles (e.g., precontrolled, heavy duty vehicles, gasoline powered trucks) whose emissions characteristics are significantly different from the emissions characteristics of motor vehicles not in the class.

(v) "Traffic flow measure" means any measure, such as signal light synchronization, freeway metering and curbside parking restrictions, that is taken for the purpose of improving the flow of traffic and thereby reducing emissions of air pollutants from motor vehicles.

(w) "Roadway type" means any class of roadway facility that can be broadly categorized as to function and assigned average speed and capacity values, e.g., expressway, arterial, collector, and local.

(x) "Time period" means any period of time designated by hour, month, season, calendar year, averaging time, or other suitable characteristics, for which ambient air quality is estimated.

[36 FR 22398, Nov. 25, 1971, as amended at 37 FR 26311, Dec. 9, 1972; 38 FR 15195, June 8, 1973; 38 FR 15835, June 18, 1973]

* * * * *

§ 51.5 Submission of plans; preliminary review of plans.

(a) Submission to the Administrator shall be accomplished by delivering five copies of the plan to the appropriate Regional Office and a letter to the Administrator notifying him of such action. Plans shall be adopted by the State and submitted to the Administrator by the Governor as follows:

(1) For any primary standard, within 9 months after promulgation of such standard.

(2) For any secondary standard, within 9 months after promulgation of such secondary standard or by such later date prescribed by the Administrator pursuant to Subpart C of this part.

(3) For compliance with the requirements of §§ 51.11 (a) (4) and 51.18, no later than August 15, 1973.

(b) Plans for different regions within a State may be submitted as a single document or as separate documents.

(c) Upon request of a State, the Administrator will provide preliminary review of a plan or portion thereof submitted in advance of the date such plan is due. Such requests shall be made in writing to the appropriate Regional Office and shall be accompanied by five copies of the materials to be reviewed. Requests for preliminary review shall not operate to relieve a State of the responsibility of adopting and submitting plans in accordance with prescribed due dates.



(d) Submission to the Administrator shall be accomplished by delivering 10 copies of the transportation control portions of the plan to the appropriate regional office. Such portions shall be adopted by the State and submitted by the Governor.

(e) Upon request of a State, the Administrator will provide preliminary review of the draft transportation control measures or portions thereof in advance of the date such measures are due. Such requests shall be made as provided in paragraph (c) of this section and shall not operate to relieve a State of its responsibility for adopting and submitting transportation control measures in accordance with prescribed due dates.

[36 FR 22398, as amended at 38 FR 15195, June 8, 1973, 38 FR 15836, June 18, 1973]

§ 51.6 Revisions.

(a) The plan shall be revised from time to time, as may be necessary, to take account of:

(1) Revisions of national standards,

(2) The availability of improved or more expeditious methods of attaining such standards, such as improved technology or emission charges or taxes, or

(3) A finding by the Administrator that the plan is substantially inadequate to attain or maintain the national standard which it implements.

(b) The plan shall be revised within 60 days following notification by the Administrator under paragraph (a) of this section, or by such later date prescribed by the Administrator after consultation with the State.

(c) The plan may be revised from time to time consistent with the requirements applicable to implementation plans under this part.

(d) Any revision of any regulation or any compliance schedule pursuant to paragraph (c) of this section shall be submitted to the Administrator no later than 60 days after its adoption.

(e) Revisions other than those covered by paragraphs (a) and (d) of this section shall be identified and described in the next semiannual report required by § 51.7.

(f) Any revision shall be submitted only after any applicable hearing requirements of § 51.4 have been satisfied.

[37 FR 22398, Nov. 25, 1971, as amended at 37 FR 26312, Dec. 9, 1972]

* * * * *

§ 51.15 Compliance schedules.

(a)(1) Each plan shall contain legally enforceable compliance schedules setting forth the dates by which all stationary and mobile sources or categories of such sources must be in compliance with any applicable requirement of the plan. Such compliance schedules shall contain increments of progress required by paragraph (c) of this section.

(2) A plan may provide that compliance schedules for individual sources or categories of sources will be formulated following submittal of the plan. Such compliance schedules shall be submitted to the Administrator within 60 days following the date such schedule is adopted but in no case later than the prescribed date for submittal of the first semiannual report required by § 51.7: *Provided, however,* That compliance schedules for nitrogen oxides required for stationary source shall be submitted to the Administrator no later than the prescribed date for the submittal of the second semi-annual report required by § 51.7. Where submission of compliance schedules is deferred by a State under this subparagraph, the plan shall specify a final compliance date applicable to each source subject to an applicable requirement of the plan. Compliance schedules submitted pursuant to this subparagraph shall require each source or category of sources to comply with such requirement within the times specified in paragraph (b) of this section but in no event later than the date specified in the plan for final compliance with such requirement.

(b)(1) Any compliance schedule designed to provide for attainment of a primary standard shall provide for compliance with the applicable plan requirements as expeditiously as practicable and in no case, except as provided by Subpart C of this part, later than the date specified for attainment of such primary standard pursuant to § 51.10(b).



(2) Any compliance schedule designed to provide for attainment of a secondary standard shall provide for compliance with the applicable plan requirements in a reasonable time and in no case, except as provided in Subpart C of this part, later than the date specified for the attainment of such secondary standard pursuant to § 51.10(c).

(c) Any compliance schedule or revision thereof extending over a period of more than 1 year from the date of its adoption by the State agency shall provide for legally enforceable increments of progress toward compliance by each affected source or category of sources: *Provided however*: That increments of progress shall not be required for a compliance schedule which does not extend beyond January 31, 1974. Increments of progress shall include, where practicable, each increment of progress specified in § 51.1(q) and shall include such additional increments of progress as may be necessary to permit close and effective supervision of progress toward timely compliance.

[37 FR 26312, Dec. 9, 1972]

* * * * *

§ 51.32 Request for 1-year postponement.

(a) Pursuant to section 110(f) of the Act,[1] the Governor of a State may request, with respect to any stationary source or class of moving sources, a postponement for not more than 1 year of the applicability of any portion of the control strategy.

(b) Any such request regarding sources located in an interstate region shall show that the Governor of each State in the region has been notified of such request.

(c) Any such request shall clearly identify the source(s) and portion(s) of the control strategy which are the subject of such request and shall include informa-

[1] Defined term (Clean Air Act) see definitions.

tion relevant to the determinations required by section 110(f) of the Act.

(d) A public hearing will be held, before the Administrator or his designee, on any such request.

(e) No such request shall operate to stay the applicability of the portion(s) of the control strategy covered by such request.

(f) A State's determination to defer the applicability of any portion(s) of the control strategy with respect to such source(s) will not necessitate a request for postponement under this section unless such deferral will prevent attainment or maintenance of a national standard within the time specified in such plan: *Provided, however,* That any such determination will be deemed a revision of an applicable plan under § 51.6.

[36 FR 22398, Nov. 25, 1971, as amended at 38 FR 15958, June 19, 1973]

• • • • •

§ 52.572 Approval status.

The Administrator approves Georgia's plan for attainment and maintenance of the national standards.

[37 FR 19808, Sept. 22, 1972]

• • • • •



39 Fed. Reg. 34533-34535

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 261-7]

# PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

# PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

## Variances, Enforcement Orders, and Confidentiality Provisions

### DEFERRAL OF IMPLEMENTATION PLAN REQUIREMENTS

During the past 12 months, four Circuit Courts of Appeal have addressed the question of whether a state may extend a source's compliance date under the State's implementation plan without satisfying the substantive and procedural requirements of Section 110(f) of the Clean Air Act (Act). Three of these courts—the First, Second and Eighth Circuits [1]—held that source compliance dates could be deferred through the mechanism of a State-issued and EPA-approved variance or enforcement order but only up to the attainment date for meeting the primary ambient air quality standards. In most instances, the date for meeting the primary standards is no later than July 31, 1975. However, in some air quality control regions (AQCRs), primary standards attainment dates have been deferred up to two years through extensions granted under authority of Section 110(e) of the Act.

---

[1] Natural Resources Defense Council, Inc. (NRDC) et al. v. EPA, 478 F.2d 875 (1st Cir. 1973), NRDC et. al. v. EPA (Nos. 72-1728 and 72-2165, 2nd Cir., March 13, 1974), NRDC et. al. v. EPA, 483 F.2d 690 (8th Cir. 1973).

From a technical standpoint, the pronouncements of the three circuit courts referred to above can be treated as applying only to those States which are within the jurisdiction of the courts. However, the Administrator believes that when three appellate courts uniformly resolve an issue which is common to every state, the decisions of the courts should be accepted as strongly persuasive guidance for Agency action in all states. Accordingly, the Administrator has determined that the proper course of action is to revise 40 CFR Part 51 (Regulations for Preparation, Adoption, and Submittal of Implementation Plans) to be consistent with the decisions of the courts, and to simultaneously disapprove in 40 CFR Part 52 (Approval and Promulgation of Implementation Plans) the provisions in all plans which have deferral authority inconsistent with the terms of 40 CFR Part 51 as revised. This revision and disapproval are published as final rulemaking in another part of this FEDERAL REGISTER. Regulations limiting the issuance of variances, enforcement orders or other state-initiated measures designed to defer compliance with the applicable plan are proposed below for all states. Those proposed regulations will supersede the variance portion of the June 11, 1974 proposal (39 FR 20511) for the State of Washington. This action is being taken so that the regulatory language will be uniform for all states. For the same reason these regulations are being proposed for Indiana, Iowa, Massachusetts, and Rhode Island, even though regulations were promulgated previously for these states.

The fourth appellate court[2] to address the issue of compliance date deferrals held that section 110(f) of the Act is the exclusive means of deferring a compliance date even where the deferral does not go beyond the date for attaining primary standards. It is the Administrator's opinion that compliance dates which do not go beyond applicable attainment dates for primary or secondary standards should be dealt with as a plan revision pursuant to 40 CFR 51.6 and 51.8. Accordingly, the Agency has requested the Supreme Court to review

[2] NRDC et al. v. EPA (N. 72-2402, 5th Cir. February 8, 1974).



the Fifth Circuit Court's opinion and to stay the decision of the court pending the outcome of the review. On June 10, 1974, the Supreme Court granted both requests. However, the Fifth Circuit opinion, unless overturned by the Supreme Court, represents the law in the six-state area encompassed by the boundaries of the Fifth Circuit. Therefore, although the Part 51 and related Part 52 actions announced herein will apply to these states if the decision of Fifth Circuit on this issue is overturned, final Agency action on this matter must await the decision of the Supreme Court. The variance and/or enforcement order provisions presently contained in implementation plans for the six affected states will, however, be subject to the categorical disapproval notice which is also being announced herein.

As indicated above, there may be instances where, pursuant to the provisions of section 110(e) of the Act, the attainment date for meeting a primary standard in a given AQCR has been extended beyond 1975. Where such an extension has been granted, revised § 51.32(f) provides that compliance date deferrals which go no further than the extension date may be issued without looking to the provisions of § 110(f) of the Act. However, such deferrals will be subject to the requirement that they apply only to those sources for which technological inability served as the basis for the section 110(e) extension. In addition, the compliance date reflected in such deferrals must still be based upon that degree of progress which, under the circumstances, is as expeditious as can practicably be required of the source.

In distinguishing between the "pre" and "post" attainment date periods for meeting a primary standard it appears that the First, Second and Eighth Circuits were limiting their holdings to those compliance date provisions which were part of a control strategy for meeting a primary ambient air quality standard. Nevertheless, the Agency construes the "pre" and "post" attainment date principle established by these courts in the realm of primary standards as a substantial indication of what must be done with respect to compliance date provisions designed to meet the secondary standards. Ac-

cordingly, the Part 51 revision promulgated below extends the "pre" and "post" attainment date dichotomy to the secondary standards and provides that (apart from relief obtainable under section 110(f) no compliance date which is part of a control strategy designed to meet the secondary standards may be extended beyond the applicable attainment date specified in 40 CFR Part 52.

Unlike the mid-1975 date which, under section 110(a)(2)(A)(i), is generally the date for attaining the primary standards, the Clean Air Act provides no specific date for attaining the secondary standards, but, instead, instructs the states to adopt (and the Agency to approve) secondary standard attainment dates which are reasonable. Part 51, however, established mid-1975 as the reasonable date, subject to a State's showing that good cause existed for deferring the date. Many states have made such a showing. Accordingly, the Part 51 postponement provisions which apply to the secondary standards do not have a generally applicable attainment date.

With respect to variances aimed at secondary standard plan requirements, it has been contended that the approval of such variances would depend on a potentially difficult determination of whether the plan requirement being waived is necessary for attainment of primary versus secondary standards. The Administrator has considered this argument and found it to be unpersuasive. Where a plan contains a single control strategy for attainment of both primary and secondary standards, the attainment dates will be identical, thus making it unnecessary to distinguish whether a variance would prevent attainment of primary or secondary standards. Correspondingly, where the date for attainment of primary standards is different than the secondary standards attainment date, the plan contains separate control measures necessary for attainment of each standard. Thus, any variance could be easily associated with the control strategy for attainment of a specific standard.

Also as a result of the Fifth Circuit decision referenced above, § 52.26(b) is added below to make it clear that provisions in an implementation plan which either ex-



plicitly or implicitly direct State officials, charged with constructing the terms of enforcement orders or variances, to give proper regard to availability of technology, source hardship, or economic burden can not be considered as a basis for approving a compliance date postponement which goes beyond the end limits established under Part 51 as revised herein. The new language has been added as a means of discouraging source-initiated State court litigation over the reasonableness of enforcement orders which have compliance schedule terms consistent with the requirements of Part 51 as revised herein. Without such qualifying language, it is feared that some sources might choose to litigate properly constructed compliance schedules issued by State officials on the ground that a later compliance date is warranted because of hardship, economic burden, or technological difficulties.

By contrast, the new language is not intended, in any way, to conflict with the existing Part 51 language which is contained in § 51.2(b) and (d). These two paragraphs, which have always permitted States to consider the cost-effectiveness of a control strategy as well as its social and economic consequences, still permit States to do so. However, the introduction of the new language referred to above makes it clear that these considerations cannot serve as the basis for issuing an enforcement order of granting a variance which has a terminal date that goes beyond the applicable end date established under the Part 51 revisions contained herein.

The Fifth Circuit decision involving the "source hardship" issue was not related specifically to variances and enforcement orders, but dealt with general enabling statutes which mandated such consideration in all state agency actions. The Court ordered the Administrator to disapprove the general statute in the Georgia plan. Although this disapproval is published below for the Georgia plan, the Administrator does not agree that it is necessary to disapprove such general provisions in all other state plans, since Part 51 allows such considerations under the specific circumstances noted above. Therefore, the provisions of § 52.26(b) only restrict the use of such

hardship provisions where it would conflict with the provisions of §§ 51.15(d) or 51.32(f) as revised below. By focusing on variances and enforcement orders, it is the Administrator's judgment that all illegal use of a generalized technological and "source hardship" provision will be prevented. This is consistent with the following statement in Fifth Circuit opinion: "It is, of course, appropriate for state air pollution control officials to take into account cost and feasibility factors in most circumstances; their doing so is proscribed only when those considerations are in conflict with considerations of public health," i.e., primary standards attainment dates.

Since the Part 51 revisions and the new Part 52 provision set forth below (as well as the plan disapprovals which derive from the Part 51 revisions) are the result of circuit court decisions, the Administrator finds that good cause exists for promulgating the revisions as immediately effective final rulemaking and for publishing the accompanying plan disapprovals as immediately effective final Agency action. For the same reason, § 52.26 is also being published as final Agency rulemaking and will also be effective on the date of publication. However, the Administrator feels that it would be appropriate to accept comments from the public and the affected States concerning the actions taken below. Comments may be submitted to the Environmental Protection Agency, Standards Implementation Branch, Research Triangle Park, North Carolina 27711, Attention Mr. Clark. All relevant comments received not later than 30 days after the date of publication of this notice will be considered, and where appropriate, revisions will be made. Comments received will be available for public inspection during normal business hours at the Office of Public Affairs, 401 M Street, SW., Washington, D.C. 20460.

The Administrator strongly urges States to modify their enabling legislation to be consistent with the revised Part 51 and new Part 52 requirements set forth below, and to submit such revised legislation to the Administrator for approval. Where approvable changes are submitted, the Administrator will revoke the disapproval issued below.



* * * * *

Dated: September 19, 1974

JOHN QUARLES,
*Acting Administrator.*

Parts 51 and 52, Chapter I, Title 40 of the Code of Federal Regulations are amended as follows:

1. In § 51.11, paragraph (g) is added as follows:

§ 51.11 Legal authority.

* * * *

(g) Enabling authority relating to the issuance of enforcement orders, variances, or other State-initiated measures designed to defer compliance with a plan requirement which is necessary for attainment of a national standard shall specifically provide for consistency with the following requirements.

(1) Except as provided in paragraph (g)(2) of this section compliance may not be deferred beyond the applicable attainment date specified in Part 52 of this chapter. Where a plan contains different attainment dates for primary and secondary standards (i.e., specific measures have been identified for attaining primary standards and additional measures have been identified for attaining secondary standards), a plan requirement necessary for attainment of primary standards may not

be deferred beyond the primary standards attainment date and a plan requirement for attainment of secondary standards may not be deferred beyond the secondary standards attainment date.

(2) Where the Governor of a State has requested, and the Administrator (under authority of section 110(f) of the Clean Air Act) has approved a compliance date postponement with respect to a given source, compliance may be deferred for such source only up to the expiration date of the 110(f) postponement.

(3) Where the Administrator has extended the date for attainment of a primary standard beyond July 31, 1975, pursuant to section 110(e) of the Clean Air Act, compliance with a plan requirement necessary for attainment of such primary standard may be deferred beyond July 31, 1975, only for the source or sources for which the extension was granted and only up to the expiration date of the 110(e) extension.

2. In § 51.15, paragraph (d) is added as follows:

§ 51.15 Compliance schedules.

* * * * *

(d) Regulations relating to the issuance of compliance schedules in conjunction with or pursuant to enforcement orders, variances, or other measures designed to obtain compliance with a plan requirement which is necessary for attainment of a national standard shall specifically provide for consistency with the following requirements.

(1) Except as provided in paragraph (d)(2) of this section, compliance schedules may not set forth dates of compliance which extend beyond applicable attainment dates specified in Part 52 of this chapter. Where a plan contains different dates of attainment for primary and secondary standards, a compliance schedule for a source included in the applicable control strategy for attainment of primary standards may not set forth a date of compliance which extends beyond the attainment date for such primary standards, and a compliance schedule for a source included in the applicable control strategy for attainment of secondary standards may not set forth a



date of compliance which extends beyond the attainment date for such secondary standards.

(2) Where the Governor of a State has requested, and the Administrator (under authority of section 110(f) of the Clean Air Act) has approved a compliance date postponement with respect to a given source, the compliance schedule for such source may set forth a date of compliance only up to the expiration date on the 110(f) of postponement.

(3) Where the Administrator has extended the date for attainment of a primary standard beyond July 31, 1975, pursuant to section 110(e) of the Clean Air Act, compliance with a plan requirement necessary for attainment of such primary standard may be deferred beyond July 31, 1975, only for the source or sources for which the extension was granted and only up to the expiration date of the 110(e) extension.

(4) Any change to a compliance date shall not become part of the applicable plan until the change has been submitted to and approved by the Administrator as a plan revision under §§ 51.6 and 51.8 of this chapter.

3. In § 51.32, paragraph (f) is revised. As amended, § 51.32 reads as follows:

§ 51.32 Request for 1-year postponement.

* * * * *

(f) A State's decision to defer the date by which a source must achieve compliance with an applicable plan provision will not necessitate a request for postponement under this section if the deferral meets the following requirements:

(1) Compliance is not deferred beyond the applicable attainment date specified in Part 52 of this chapter. Where a plan contains different dates of attainment for primary and secondary standards (i.e., specific measures have been identified for attainment of primary standards and additional measures have been identified for attainment of secondary standards), the applicable attainment date for the purposes of this paragraph shall be deter-

mined by whether the plan requirement being deferred is necessary for attainment of primary standards or secondary standards.

(2) Where the Administrator has extended the date for attainment of a primary standard beyond July 31, 1975, pursuant to section 110(e) of the Clean Air Act, compliance with a plan requirement necessary for attainment of such primary standard may be deferred beyond July 31, 1975, only for the source or sources for which the extension was granted and only up to the expiration date of the 110(e) extension.

4. In Subpart A of Part 52, the introductory paragraph of § 52.20 is amended as follows:

§ 52.20 Attainment dates for national standards.

Each subpart contains a section which specifies the latest dates by which national standards are to be attained in each region in the State. An attainment date which only refers to a month and a year (such as July 1975) shall be construed to mean the last day of the month in question. * * *

5. In Subpart A of Part 52, § 52.26 is added as follows:

§ 52.26 Variances and enforcement orders.

(a) Subsequent to May 31, 1972, the Administrator reviewed state implementation plans to determine whether the plans will allow or permit the issuance of variances, enforcement orders, or other state-initiated measures designated to defer compliance with an applicable plan requirement after the dates specified in section 110 of the Clean Air Act for attainment of national primary and secondary ambient air quality standards. The review indicates that state plans generally are not consistent with the Clean Air Act in this regard. Accordingly, all state plans are disapproved to the extent that their enabling authority and regulations permit the deferral of compliance with applicable plan requirements beyond the statutory attainment dates specified in the Clean Air Act. This disapproval applies to all States listed in Subparts B through DDD of this part.



(b) No provision in a plan which either explicitly or implicitly directs a state official to take cognizance of source hardship, availability of technology, or economic burden may be construed to permit the issuance of a variance, enforcement order, or any other state-initiated deferral measure which has a terminal date for compliance that conflicts with the provisions of §§ 51.15(d) or 51.32 (f) of this chapter.

* * * * *

39 Fed Reg. 34572-34574

[40 CFR Part 52]

[FRL 261-8]

# APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

## Deferral of Implementation Plan Requirements and Public Availability of Emission Data

During the past 12 months, four Circuit Courts of Appeal have addressed the question of whether a state may extend a source's compliance date without satisfying the substantive and procedural requirements of section 110(f) of the Clean Air Act (Act). Three of these courts—the First, Second and Eighth Circuits[1]—held that source compliance dates could be deferred through the mechanism of a State-issued and EPA-approved variance or enforcement order but only up to the attainment date for meeting the primary ambient air quality standards. In most instances, the date for meeting the primary standards is no later than July 31, 1975. However, in some air quality control regions (AQCRs), primary standards attainment dates have been deferred by extensions granted under authority of § 110(e) of the Act.

From a technical standpoint, the pronouncements of the three circuit courts referred to above can be construed as applying only to those States which are within the jurisdiction of the courts. However, the Administrator believes that when three appellate courts uniformly resolve an issue which is common to every state, the decisions of the courts should be accepted as strongly persuasive guidance for Agency action in all states. Accordingly, the Administrator has determined that the proper course of action is to revise 40 CFR Part 51 (Regulations for Preparation, Adoption, and Submittal of Implementation Plans) to be consistent with the deci-

[1] Natural Resources Defense Council, Inc. (NRDC) et. al. v. EPA, 478 F.2d 875 (1st Cir. 1973) NRDC et. al. v. EPA (Nos. 72-1728 and 72-2165, 2nd Cir., March 13, 1974) NRDC et. al. v. EPA, 483 F.2d 690 (8th Cir. 1973).



sions of the courts, and to simultaneously disapprove in 40 CFR Part 52 (Approval and Promulgation of Implementation Plans) the provisions in all plans which have deferral authority inconsistent with the terms of 40 CFR Part 51 as revised. This revision and disapproval are published as final rulemaking in another part of this FEDERAL REGISTER. Regulations limiting the issuance of variances, enforcement orders or other state-initiated measures designed to defer compliance with the applicable plan are proposed below for all states. These proposed regulations will supersede the variance portion of the June 11, 1974 proposal (39 FR 20511) for the State of Washington. This action is being taken so that the regulatory language will be uniform for all states. For the same reason these regulations are being proposed for Indiana, Iowa, Massachusetts, and Rhode Island, even though regulations were promulgated previously for these states. When finalized, the regulatory language proposed herein will supersede the extant variance regulations for these states.

The fourth appellate court[2] to address the issue of compliance date deferrals held that section 110(f) of the Act is the exclusive means of deferring a compliance date even where the deferral does not go beyond the date for attaining primary standards. It is the Administrator's opinion that compliance date deferrals which do not go beyond applicable attainment dates for primary or secondary standards should be dealt with as a plan revision pursuant to 40 CFR 51.6 and 51.8. Accordingly, the Agency requested the Supreme Court to review the Fifth Circuit Court's opinion, and to stay the decision of the Court pending the outcome of the review. On June 10, 1974, the Supreme Court granted both requests.

Irrespective of this appeal, it is clear that the variance and enforcement order provisions of these states must be disapproved along with those of all other states. However, although the replacement regulations proposed below will apply to the six states within the Fifth Circuit

[2] NRDC et. al. v. EPA (N. 72-2402, 5th Cir. February 8, 1974).

if the Supreme Court reverses the Fifth Circuit's decision, final Agency action on this matter must await the decision of the Supreme Court.

The replacement regulation proposed below requires that, except where a postponement has been granted pursuant to section 110(f) of the Act, no enforcement order, variance, or other state-initiated measure which defers compliance with a provision of the applicable plan shall be granted if it defers compliance beyond the applicable date for attainment of national standards specified in 40 CFR Part 52. Where a section 110(f) postponement has been granted for a given source, compliance for such source may be deferred only up to the expiration date of the section 110(f) postponement. Where a plan contains different dates for attainment of primary and secondary standards, a plan requirement necessary for attainment of primary standards may not be deferred beyond the primary standards attainment date and a plan requirement for attainment of secondary standards may not be deferred beyond the secondary standards attainment date. Finally, the regulation specifies that where the Administrator has extended the date for attainment of a primary standard beyond July 31, 1975, pursuant to section 110(e) of the Act, compliance with a plan requirement necessary for attainment of such primary standard may be deferred beyond July 31, 1975, only for the source or sources for which the



extension was granted, and only up to the expiration date of the section 110(e) extension.

• • • • •

Dated: September 19, 1974.

JOHN QUARLES,
*Acting Administrator.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

1. In the following sections, paragraph (b) is added or revised as indicated below:

a. Subpart B—section 52.58 [added].
b. Subpart C—section 52.94 [added].
c. Subpart D—section 52.142 ([added].
d. Subpart E—section 52.180 [added].
e. Subpart F—section 52.268 [added].
f. Subpart G—section 52.342 [added].
g. Subpart H—section 52.378 [added].
h. Subpart I—section 52.430 [added].
i. Subpart J—section 52.498 [added].
j. Subpart K—section 52.527 [added].
k. Subpart L—section 52.579 [added].
l. Subpart M—section 52.630 [added].
m. Subpart N—section 52.681 added].
n. Subpart O—section 52.737 [added].
o. Subpart P—section 52.791 [revised].
p. Subpart Q—section 52.829 [revised].
q. Subpart R—section 52.882 [added].
r. Subpart S—section 52.930 [added].
s. Subpart T—section 52.984 [added].
t. Subpart U—section 52.1027 [added].
u. Subpart V—section 52.1114 [added].
v. Subpart W—section 52.1131 revised].
w. Subpart X—section 52.1179 [added].
x. Subpart Y—section 52.1233 [added].
y. Subpart Z—section 52.1278 [added].
z. Subpart AA—section 52.1337 [added].
a.a. Subpart BB—section 52.1380 [added].
b.b. Subpart CC—section 52.1434 [added].

c.c. Subpart DD—section 52.1484 [added].
d.d. Subpart EE—section 52.1527 [added].
e.e. Subpart FF—section 52.1601 [added].
f.f. Subpart GG—section 52.1627 [added].
g.g. Subpart HH—section 52.1687 [added].
h.h. Subpart II—section 52.1776 [added].
i.i. Subpart JJ—section 52.1828 [added].
j.j. Subpart KK—section 52.1882 [added].
k.k. Subpart LL—section 52.1928 [added].
l.l. Subpart MM—section 52.1985 [added].
m.m. Subpart NN—section 52.2057 [added].
n.n. Subpart OO—section 52.2079 [revised].
o.o. Subpart PP—section 52.2130 [added].
p.p. Subpart QQ—section 52.2177 [added].
q.q. Subpart RR—section 52.2231 [added].
r.r. Subpart SS—section 52.2301 [added].
s.s. Subpart TT—section 52.2332 [added].
t.t. Subpart UU—section 52.2378 [added].
u.u. Subpart VV—section 52.2450 [added].
v.v. Subpart WW—section 52.2480 [added].
w.w. Subpart XX—section 52.2527 [added].
x.x. Subpart YY—section 52.5280 [added].
y.y. Subpart Z—section 52.2629 [added].
z.z. Subpart AAA—section 52.2675 [added].
a.a.a. Subpart BBB—section 52.2727 [added].
b.b.b. Subpart CCC—section 52.2777 [added].
c.c.c. Subpart DDD—section 52.2825 [added].

Paragraph (b) reads as follows:

• • • • •

(b) *Regulation limiting variances.* No variance, enforcement order, or other state-initiated measure designed to defer compliance with a plan requirement which is necessary for attainment of a national standard shall be issued unless it specifically provides for consistency with the following requirements.

(1) Except as provided in paragraph (b)(2) of this section compliance may not be deferred beyond the applicable attainment date specified in Part 52 of this chapter. Where a plan contains different attainment dates for primary and secondary standards (i.e., specific



measures have been identified for attaining primary standards and additional measures have been identified for attaining secondary standards), the applicable attainment date for purposes of this paragraph shall be determined by whether a plan requirement being deferred is necessary for attainment of primary or secondary standards.

(2) Where the Governor of a state has requested, and the Administrator (under authority of section 110(f) of the Clean Air Act) has approved a compliance date postponement for a given source, compliance may be deferred for such source only up to the expiration date of the section 110(f) postponement.

(3) Where the Administrator has extended the date for attainment of a primary standard beyond July 31, 1975, pursuant to section 110(e) of the Act, compliance with a plan requirement necessary for attainment of such primary standard may be deferred beyond July 31, 1975, only for the source or sources for which the extension was granted and only up to the expiration date of the section 110(e) extension.

• • • • •

Calendar No. 1214

91ST CONGRESS
*2d Session*

SENATE

REPORT
No. 91-1196

# NATIONAL AIR QUALITY STANDARDS ACT OF 1970

SEPTEMBER 17, 1970.—Ordered to be printed

Mr. BYRD of West Virginia (for Mr. MUSKIE, from the Committee on Public Works, submitted the following

## REPORT

together with

## INDIVIDUAL VIEWS
[To accompany S. 4358]

The Committee on Public Works, to which the bill (S. 4358), to amend the Clean Air Act as amended, was referred having considered the same, reports favorably thereon without amendment. An original bill (S. 4358) is reported in lieu of S. 3229, S. 3466, and S. 3546 which were considered by the Committee.

### GENERAL STATEMENT

The committee bill would restructure the methods available to attack a critical and growing national problem of air pollution.

The legislation reported by the committee is the result of deep concern for protection of the health of the American people. Air pollution is not only an aesthetic nuisance. The Committee's concern with direct adverse effects upon public health has increased since the publication of air quality criteria documents for five major



pollutants (oxides of sulfur, particulates, carbon monoxide, hydrocarbons and oxidants). These documents indicate that the air pollution problem is more severe, more pervasive, and growing at a more rapid rate than was generally believed.

The new information that carbon monoxide concentrations at levels damaging to public health occur in Chicago more than 22 percent of the time, and that other cities have similar problems with carbon monoxide and other pollutants, intensified the committee's concern to authorize a massive attack on air pollution. This bill is designed to provide the basis for such an attack.

### *NATIONAL AIR QUALITY STANDARDS AND GOALS*

*Sec. 110. (a)(1) Within thirty days after the date of enactment of this section, the Secretary shall publish in the Federal Register, in accordance with section 553 of title 5 of the United States Code, proposed national ambient air quality standards for any air pollution agent or combination of such agents for which air quality criteria have been issued prior to the date of enactment of this section. He shall, after a reasonable time for interested persons to submit written comments thereon, promugate such proposed national ambient air quality standards with such modifications as he deems appropriate. Such promulgation shall occur no later than ninety days after the initial publication of such proposed national ambient air quality standards.*

*(2) With respect to any air pollution agent or combination of such agents for which air quality criteria and information and control techniques are issued subsequent to enactment of this section, the Secretary shall publish, simultaneously with the issuance of such criteria and information, proposed national ambient air quality standards for any such pollution agent or combination of such agents. The procedure provided for in paragraph (1) of this subsection shall apply.*

*(3) National ambient air quality standards, proposed and promulgated to paragraphs (1) and (2) of this sub-*

*section, shall be ambient air quality standards the attainment and maintenance of which are necessary to protect the health of persons. Such standards shall be revised, as necessary, in the same manner as promulgated.*

*(b) Simultaneously with the initial publication of proposed national ambient air quality standards pursuant to subsection (a) of this section, the Secretary shall publish proposed national ambient air quality goals the attainment and maintenance of which are necessary to protect the public health and welfare from any known or anticipated adverse effects associated with the presence of such air pollution agent or combination of such agents in the ambient air, including, but not limited to, adverse effects on soils, water, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, as well as effects on economic values. Such national ambient air quality goals shall be published and promulgated in the same manner as prescribed in subsection (a) of this section for proposed national ambient air quality standards. Such goals shall be revised as necessary, in the same manner as promulgated.*

## *IMPLEMENTATION PLANS*

*Sec. 111. (a)(1) After the promulgation of national ambient air quality standards and national ambient air quality goals, or revisions thereof under section 110 of this Act, for any air pollution agent or combination of such agents, each State shall, after reasonable notice and public hearings, adopt and submit to the Secretary, within nine months after such promulgation, a plan for implementation, maintenance, and enforcement of such standards and goals in each air quality control region designated or established pursuant to this Act. Unless a separate public hearing is provided, each State shall consider adoption of ambient air quality standards which are more restrictive than the national ambient air quality standards at the hearing required by this paragraph.*

*(2) The Secretary shall, within four months after the date required for such submission, act to approve or to disapprove such plan or portion thereof. The Secretary*



*shall approve such plan, or any portion thereof, if he determines that it—*

*(A) provides for the attainment of such national ambient air quality standards within three years from the date of approval of such plan;*

*(B) includes emission requirements, schedules and timetables of compliance, and such other measures as necessary to insure attainment of any applicable ambient air quality standard and goal;*

*(C) includes provision for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality and, (ii) upon request, make such data available to the Secretary;*

*(D) includes, to the extent necessary, appropriate procedures, including, but not limited to, land-use and air and surface transportation controls and permits, for insuring that any source of air pollution agents or combination of such agents will be located, operated, and for other than moving sources, designed, constructed, and equipped in such a way that such sources will not interfere with implementation, maintenance, and enforcement of any applicable air quality standard and goal;*

*(E) contains adequate provisions for intergovernmental co-operation, including measures necessary to insure that emissions of such agents or combination of such agents from sources located in one air quality control region will not cause or contribute to a violation of such air quality standards or prevent attainment of such air quality goals in any other air quality control region or portion thereof;*

*(F) provides (i) that any person who owns, leases, operates, or controls any stationary source subject to the provisions and requirements of such implementation plan shall be required to furnish to the appropriate State agency periodic reports on the nature and amounts of emissions of any air pollution agent or combinations of such agents from such source, and (ii) that such reports shall be correlated by the State agency with any emission requirements*

*or standards established pursuant to this Act which reports shall be part of the public record and available at reasonable times for public inspection;*

*(G) provides necessary assurances that the State will have adequate personnel, funding, and authority to carry out such implementation plan, including requirements for installation of monitoring equipment and methods on sources subject to emission requirements; periodic reporting on the nature and amounts of emissions; and authority comparable to that in section 303 of this Act, and contingency plans to implement such authority as determined by the Secretary;*

*(H) provides, to the extent necessary, for a program of periodic inspection and testing of motor vehicles, as authorized by section 208 of this Act;*

*(I) provides for revision, after public hearings, of such plan from time to time as may be necessary to take account of revisions of such ambient air quality standards and goals or availability of improved or more expeditious methods of achieving such standards and goals; and*

*(J) identifies the air quality control region to which such plan applies including the boundaries of such region if it is one resulting from a subdivision under section 108(a) of this Act.*

*(3) Each approved plan, or portion thereof, for implementation, maintenance, and enforcement of such standards and goals shall be the implementation plan applicable to such air quality control region.*

*(b) The Secretary may, wherever he determines necessary, extend the period for submission of any portion of any plan for implementation of any national ambient air quality goal, for a period not to exceed eighteen months from the date otherwise required for submission of such plan.*

*(c) The Secretary shall, after consideration of any State hearing record promptly prepare and publish proposed regulations setting forth such as plan, or portion thereof, for such quality air control region if (1) a*



*State fails to submit, for any air quality control region, or portion thereof, a plan for implementation, maintenance, and enforcement of ambient air quality standards and goals within the time prescribed, or (2) the plan, or portion thereof, submitted for any such region is determined by the Secretary not to be in accordance with the requirements of this section. If such State held no public hearing associated with adoption of an implementation plan, the Secretary shall provide opportunity for such hearing within such region on any proposed regulation for such region. The Secretary shall, within six months after the date required for submission of such plans, promulgate any such regulations unless, prior to such promulgation, the subject State has adopted and submitted a plan which the Secretary determines to be in accordance with the requirements of this section. A plan promulgated by the Secretary for any air quality control region shall be the plan applicable to such region in the same manner as if such plan had been adopted by the subject State and approved by the Secretary pursuant to subsection (a) of this section and shall remain in effect until such State submits a plan and it is approved under this section.*

*(d) Ambient air quality standards and implementation plans adopted by States and submitted to the Secretary pursuant to this Act prior to enactment of this section shall remain in effect, unless the Secretary determines that such air quality standards and implementation plans, or portions thereof, are not consistent with the applicable requirements of this Act and will not provide for the attainment of national ambient air quality standards in the time required by this Act. If the Secretary so determines, he shall, within ninety days after promulgation of any national ambient air quality standards pursuant to section 110(a)(1) of this Act, notify the appropriate State or States and specify in what respects changes are needed to meet the additional requirements of this Act, including requirements to implement ambient air quality goals. If such changes are not adopted by the State, or States after public hearings and within six months after such notification, the Secretary shall*

*promulgate such changes pursuant to subsection (c) of this section.*

*(e)(1) Whenever, the Secretary or his authorized representative finds new information developed from surveys, studies, investigation, or reports, or any information otherwise made available to him, that, in any air quality control region, an approved or promulgated implementation plan will be, or has been, substantially inadequate to achieve national ambient air quality standards promulgated pursuant to this Act, the Secretary shall notify the appropriate State or States of such new information and shall allow the appropriate State or States an opportunity to respond. If such State or States fails to respond within ninety days after receipt of such notice, or if such response is inadequate, the Secretary shall revise and promulgate such plan within four months, in accordance with provisions of section 553 of title 5 of the United States Code. Such revision may include an extension of the period required to obtain the quality of air established by any national ambient air quality standard established pursuant to this Act, except that such extension shall not exceed one year. No further extension shall be granted pursuant to this provision and no extension shall affect any emission requirement, timetable, or schedule of compliance adopted as a part of the plan subject to revision unless such requirement, timetable, or schedule is the subject of such revision.*

*(2) Any revised plan promulgated pursuant to this subsection shall be the plan applicable to such region in the same manner as if such plan had been adopted by the State and approved by the Secretary pursuant to this section.*

*(f)(1) No later than one year before the expiration of the period for the attainment of ambient air of the quality established for any national ambient air quality standard pursuant to section 110 of this Act, the Governor of a State in which is located all or part of an air quality control region designated or established pursuant to this Act may file a petition in the district court of the United States for the district in which all or a part of such air quality control region is located against the*



*United States for relief from the effect of such expiration (A) on such region or portion thereof, or (B) on a person or persons in such air quality control region. In the event that such region is an interstate air quality control region or portion thereof, any Governor of any State which is wholly or partially included in such interstate region shall be permitted to intervene for the presentation of evidence and argument on the question of such relief.*

*(2) Any action brought pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and appeal shall be to the Supreme Court. Proceedings before the three judge court, as authorized by this subsection, shall take precedence on the docket over all other causes of action and shall be assigned for hearing and decision at the earliest practicable date and expedited in every way.*

*(3)(A) In any such proceeding the Secretary shall intervene for the purpose of presenting evidence and argument on the question of whether relief should be granted.*

*(B) The court, in its discretion, may permit any interested person residing in any affected State to intervene for the presentation of evidence and argument on the question of relief.*

*(4) The court, in view of the paramount interest of the United States in achieving ambient air quality necessary to protect the health of persons shall grant relief only if it determines such relief is essential to the public interest and the general welfare of the persons in such region, after finding—*

*(A) that substantial efforts have been made to protect the health of persons in such region; and*

*(B) that means to control emissions causing or contributing to such failure are not available or have not been available for a sufficient period to achieve compliance prior to the expiration of the period to attain an applicable standard; or*

*(C) that the failure to achieve such ambient air quality standard is caused by emissions from a Fed-*

*eral facility for which the President has granted an exemption pursuant to section 119 of this Act.*

*(5) The court, in granting such relief shall not extend the period established by this Act for more than one year and may grant renewals for additional one year periods only after the filing of a new petition with the court.*

*(6) The Secretary, in consultation with any affected State or States, shall take such action as may be necessary to modify any implementation plan or formulate any new implementation plan for the period of such extension.*

*(7) No extension granted pursuant to this section shall effect compliance with any emission requirement, timetable, schedule of compliance, or other element of any implementation plan unless such requirement, timetable, schedule of compliance, or other element of such plan is the subject of the specific order extending the time for compliance with such national ambient air quality standard.*



SUPREME COURT OF THE UNITED STATES

No. 73-1742

RUSSELL E. TRAIN, Administrator, United States Environmental Protection Agency, ET AL.,
PETITIONERS

*v.*

NATURAL RESOURCES DEFENSE COUNCIL, INC., ET AL.

ORDER ALLOWING CERTIORARI—Filed October 15, 1974

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1974 563268 65